

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Perth Amboy Public Schools)	File No. SLD-227466
Perth Amboy, New Jersey)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: May 10, 2002

Released: May 13, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Perth Amboy Public Schools (Perth Amboy), Perth Amboy, New Jersey.¹ Perth Amboy seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to deny Perth Amboy's appeal on the grounds that it was untimely filed.² For the reasons set forth below, we deny Perth Amboy's Request for Review.

2. SLD issued a Funding Commitment Decision Letter on August 7, 2001, denying Perth Amboy's request for discounted services under the schools and libraries universal service support mechanism.³ Specifically, SLD denied Perth Amboy's request for discounts for Internet access, Funding Request Number (FRN) 524641.⁴ On September 14, 2001, Perth Amboy filed an appeal of SLD's decision, explaining that it was denied because its FCC Form 470 was not

¹ Letter from Frank Mento, Perth Amboy Public Schools, to Federal Communications Commission, filed October 5, 2001 (Request for Review).

² See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Frank Mento, Perth Amboy Public Schools, dated August 7, 2001 (Funding Commitment Decision Letter).

⁴ *Id.*

certified. Perth Amboy contends that its FCC Form 470 should be an "evergreen" application because it was originally filed in Funding Year 1 for continuing, tariffed services.⁵ On October 1, 2001, SLD issued an Administrator's Decision on Appeal, indicating that it would not consider Perth Amboy's appeal because it was received more than 30 days after the August 7, 2001 Funding Commitment Decision Letter was issued.⁶ Perth Amboy subsequently filed the instant Request for Review with the Commission.

3. For requests seeking review of decisions issued before August 13, 2001, under section 54.720(b) of the Commission's rules, an appeal must be filed with the Commission or SLD within 30 days of the issuance of the decision that the party seeks to have reviewed.⁷ Documents are considered to be filed with the Commission or SLD only upon receipt.⁸ The 30-day deadline contained in section 54.720(b) of the Commission's rules applies to all such requests for review filed by a party affected by a decision issued by the Administrator.⁹ Because Perth Amboy failed to file an appeal of the August 7, 2001 Funding Commitment Decision Letter within the requisite 30-day appeal period, we affirm SLD's decision to dismiss Perth Amboy's appeal to SLD as untimely and deny the instant Request for Review.

4. To the extent that Perth Amboy is requesting that we waive the 30-day deadline established in section 54.720(b) of the Commission's rules, we deny that request as well.¹⁰ The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.¹¹ Perth Amboy has not shown good cause for the untimely filing of its initial appeal. Perth Amboy explains that it did not receive the August 7, 2001 Funding Commitment Decision Letter until September 4, 2001 and it appealed to SLD on September 5, 2001, which would be within the 30-day limit.¹²

⁵ Letter from Frank Mento, Perth Amboy Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, filed September 14, 2001 (Request for Administrator Review).

⁶ Letters from Schools and Libraries Division, Universal Service Administrative Company, to Frank Mento, Perth Amboy Public Schools, dated October 1, 2001 (Administrator's Decision on Appeal).

⁷ 47 C.F.R. § 54.720(b).

⁸ 47 C.F.R. § 1.7.

⁹ We note that, due to recent disruptions in the reliability of the mail service, the 30-day appeal period has been extended by an additional 30 days for requests seeking review of decisions issued on or after August 13, 2001. See *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376 (rel. Dec. 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. Dec. 28, 2001 and Jan. 4, 2002). Because the August 7, 2001 Funding Commitment Decision Letter was issued before August 13, 2001, the extended appeal period does not apply to Perth Amboy.

¹⁰ See 47 C.F.R. § 54.720(b).

¹¹ See 47 C.F.R. § 1.3.

¹² Request for Review. Although Perth Amboy's Request for Administrator's Review is dated by Perth Amboy as September 5, 2001, it was not received by, or filed with, SLD until September 14, 2001. See Request for Administrator's Review.

5. We conclude that Perth Amboy has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹³ In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of submitting its appeal to SLD within the established deadline if the applicant wishes its appeal to be considered on the merits. The August 7, 2001 Funding Commitment Decision Letter clearly states that "your appeal must be ... RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) ... WITHIN 30 DAYS OF THE ... DATE ON [THE FUNDING COMMITMENT DECISION LETTER]."¹⁴ Perth Amboy's Administrator's Request for Review was not received by SLD until September 14, 2001, 38 days after the August 7, 2001 Funding Commitment Decision Letter was issued.¹⁵

6. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of adhering strictly to its filing deadlines.¹⁶ In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its appeal to SLD if it wishes its appeal to be considered on the merits. An applicant must take responsibility for the action or inaction of those employees, consultants and other representatives to whom it gives responsibility for submitting timely appeals of SLD funding decisions on its behalf. Here, Perth Amboy fails to present good cause as to why it could not timely file its appeal to SLD. We therefore find no basis for waiving the appeal filing deadline.

¹³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁴ Funding Commitment Decision Letter at 2.

¹⁵ Compare Administrator's Decision on Appeal with Funding Commitment Decision Letter.

¹⁶ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Comm. Car. Bur. rel. Nov. 24, 2000), para. 8.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed by Perth Amboy Public Schools, Perth Amboy, New Jersey on October 5, 2001, and the request to waive the 30-day time limit in which to file the appeal ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau